No. 73-1244

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In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, PETITIONER

v.

JESSIE SHORT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,

WALLACE H. JOHNSON,
Assistant to the Solicitor General,

HARRY R. SACHSE,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

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In our petition we argue that the decision of the Secretary to distribute the revenues from the portion of the Hoopa Valley Reservation known as the "Square" (see map following 412 U.S. 506) to the Indian inhabitants of that area and their descendants, represented by the Hoopa Valley Tribe, was correct, and that the decision of the Court of Claims, requiring such distributions to be shared with the residents of the Klamath River portion of the Reservation and the Connecting Strip and their descendants, is both unjust to the Hoopa Valley Tribe and an unwarranted interference with the Secretary's authority in the area of Indian affairs. We pointed out that the land in the other two areas of the Reservation had been distributed to the residents of those areas to the exclusion of the Hoopas, and that the fund in question was created largely because the Hoopas had received only small homestead allotments, and had received no allotments of timber lands, as had the Indians of the other parts of the Reservation.

Respondents' brief, in reply, gives the impression that the Court of Claims has made findings of fact contrary to these contentions. Respondents state (or suggest) that the court found as facts: (1) that half the Square was originally Yurok land, (2) that the Hoopa Valley Tribe is an arbitrary group created in 1950, and (3) that under the 1891 Executive Order and the Act of June 17, 1892, the President and Congress intended that all residents of the extended Reservation have equal rights in the whole (Br. 2-3, 18). The first two propositions, in our view, misinterpret the findings of the Court of Claims and the third is an incorrect conclusion of law.

1. Respondents assert that the Court of Claims found the northern half of the Square to be "ancestral territory of the Yurok Tribe," citing findings 5, 21, 23; App. A 15, 25-27 (Br. 3).

Those findings show that there were Yurok villages along the Klamath River to a point near its conjunction with the Trinity River, and that the northern portion of the Square, as finally located, included some of those villages. There is no finding that the Yuroks exercised any control beyond their riverside villages. More revealing is finding 30, App. A 29, which shows that in 1875, at about the time the boundaries of the Square were established, there were 571 Hoopas, 102 Redwoods and Saiaz[1] and 43 Klamaths (Yuroks and Karoks) living in the Square. Thus when the Hoopa Valley Reservation was created it was, as its name suggests, predominantly Hoopa.

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[1]The Redwood and Saiaz, as well as several other bands, later became part of the Hoopa Valley Tribe. See App. pp. 90-91.

Our petition recognizes that the Hoopa Valley Tribe is not racially pure, and indeed points out that the Hoopa Tribe has expanded to include most of the people of the Square.[2] Moreover, to the extent that there are long term residents of the Square and their descendants who are not enrolled members of the Hoopa Tribe, we admit they are entitled to participate in the assets of the Square (Pet. 3-4 and n. 2).

2. Respondents state that the findings of the Court of Claims show that the "Hoopa Valley Tribe" is an organization of Indians of arbitrary composition that did not come into existence until 1950 (citing findings 136-156, App. A. 85-92). But the findings show that the historic Hoopa Tribe was the dominant tribe of the Square (finding 30, App. A. 29); that the early censuses of the Square were made each year as a "Census of the Indians of the Hoopa Tribe" (finding 38, App. A 31); that in 1915 and 1916 a tribal council known as the

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[2]The statement in our petition that most of the Yuroks, in contrast to the Hoopas, live outside the Reservation altogether, which respondents do not dispute but point out (Br. 3) is not based on the evidence in the record, is based on information supplied us by the Bureau of Indian Affairs. Though the information is not necessary to a determination of the case, it is instructive that the Bureau's records and inquiries indicate that 850 to 900 of the approximately 1370 enrolled members of the Hoopa Valley Tribe live on the Reservation. By contrast, of the 3323 plaintiffs the Bureau's information shows that some 200 live on the original Hoopa Reservation and some 275 live on the Hoopa extension, the Bureau has no records of 383, and the remainder live outside the Reservation.

Hoopa Council, composed exclusively of people of the Square, was convoked and ruled on eligibility for allotments on the Square (App. A 70, 77); that in 1933 the Indians of the Square petitioned the BIA to be allowed to organize a "Tribal Council" (finding 113, App. A 78) which was approved as the Hoopa Business Council and which became the tribal council of the present Hoopa Valley Tribe (see discussion at Pet. 6-7). It is accordingly inaccurate to characterize the present Hoopa government, which is the successor to the ancient tribal government and the intermediate modern councils, as being either arbitrary or first created in 1950.[3]

3. Respondents rely (Br. 18) on first the Court of Claims' "finding" that the "plain and natural effect of the [executive order of 1891 extending the reservation] was to create an enlarged Reservation in which Indians of the original reservation and the Indians of the added tracts would have equal rights in common" (finding 183, App. A 101). But this "finding" is of course a conclusion of law, not a finding of fact, and, as we showed in our petition (Pet. 4-6), it is an incorrect conclusion. In any event, it is a conclusion as to the purpose of an 1891 Executive Order. The next year, by the Act of June 17, 1892, 27 Stat. 52, Congress required that allotments on the Klamath River portion of the Reservation be given exclusively to the Indian inhabitants of that portion and

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[3]A history of traditional governments first being ignored by the federal government and then reorganized and recognized is typical of Indian tribes throughout the country. Indian self-government was actively discouraged by the federal government from the time of the allotment Acts (culminating in the 1870's) until the early 1930's when John Collier became Commissioner of Indian Affairs and Congress enacted the Indian Reorganization Act. See U.S. Department of the Interior, *Federal Indian law*, 114-117; 127-133.

that they receive the revenues produced by sales of excess lands, to the exclusion of the residents of the Connecting Strip and the Square.[4] The Secretary thereafter allotted the Connecting Strip and distributed its revenues in a similarly exclusive fashion (App. A 58, see Pet. 5-6). These acts, also found as fact by the Court of Claims, were the most important administrative acts concerning the Reservation after its enlargement. They constitute, together with the deliberately small allotments made on the Square (App. A 60-61), a solid basis for the Secretary's subsequent decision to continue to treat the portions separately so far as the revenues from land are concerned.

In sum, it is not necessary to contradict the findings of fact of the Court of Claims to correct its ultimate conclusion of law--a conclusion that results, in our view, in an unwarranted dilution of the assets of an Indian tribe under the protection of the United States.

For the foregoing reasons, as well the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WALLACE H. JOHNSON,
Assistant Attorney General.

HARRY R. SACHSE,
Assistant to the Solicitor General.

April 1974.

[4]There is no reason to search for a hidden intent in this Act (compare Resp. Br. 18; finding 184, App. A 101-102) since, by its terms, it treats one part of the Reservation separately with respect to rights in the land.